The learned trial judge held, in my view correctly, that the stipulations in the sub-lease had been carried out and that therefore the respondent was entitled to a renewal of the sub-lease. I would accordingly dismiss this appeal with costs and order that the deposit of $500 be paid to the respondent against his costs.

Appeal dismissed.

KIAH BINTE HANAPIAH v. SOM BINTE HANAPIAH.

[C.A. (Mathew, C.J., Sir Charles Murray-Aynsley, C.J. (S.) and Spenser Wilkinson, J.) March 16, 1953]

[Penang — F.M. Civil Appeal No. 54 of 1952]

Muslim law — Gifts — Whether gift was complete — Whether Malay type wooden house resting on stilts and not buried into earth moveable property.

The plaintiff-respondent in this case was the grand-daughter of one Haji Hassan bin Musa (deceased). During his lifetime he erected a wooden house and when it was completed gave it in the presence of witnesses to the grand-daughter. On his death the appellant entered into possession of the house which stood on her land. On being asked by the respondent to hand over the house she refused and proceedings were instituted. The learned trial judge held that the house was built by the grandfather and that the house was given to the plaintiff by word of mouth which gift was complete by the plaintiff taking immediate possession of it. The appellant appealed on two main grounds. She contended, (i) that the house was attached to the land and therefore belonged to the appellant who was the owner of the land, and (ii) the gift was incomplete as the gift was not to take effect till death.

Held: (1) it is well-established that houses of the Malay type resting on stilts and not buried into the earth are moveable property; (2) (Sir Charles Murray-Aynsley, C.J. dissenting) the gift was complete at the moment of the formal presentation and was therefore valid.

CIVIL APPEAL.

Lim Eng Cheang for the apppellant.

Jag-Jit Singh for the respondent.

Cur. Adv. Vult.

Mathew, C.J. : — The facts in this case are simple. The plaintiff-respondent is the grand-daughter of one Haji Hassan bin Musa (deceased). During his lifetime he erected a wooden house (Malay type on stilts) and when it was completed gave it in the presence of witnesses to his grand-daughter. On his death the appellant entered into possession of the house which stands on her land. On being asked by the respondent to hand over the house she refused, and these proceedings were instituted. The learned trial judge concluded his grounds of judgment with the following passage :—

"I am satisfied that the house was in fact built by the grand-father and not by her and her husband, and that the house was given to the plaintiff by word of mouth which gift was complete by the plaintiff taking immediate possession of it."

The appeal against that decision is on two main grounds.

(i) the house is attached to the land and therefore belongs to the appellant who is the owner of the land;

(ii) the gift was incomplete as the gift was not to take effect until his death.

As regards the first ground, it is well established that houses of the Malay type resting on stilts not buried into the earth are moveable property and have always been so regarded. The second ground presents more difficulty.

Raja Awang bin Musa, who was present at the presentation of the house to the respondent, gave evidence that the deceased gave the house to the respondent and told her that she could remove the house after his death. Another witness, Din bin Mat, said that the respondent's grand-father told him that "the house was for the plaintiff and while he was alive he would live there".

The evidence tends to show that the gift was only to take effect on the grand-father's death and was therefore incomplete. Mohamedan Law on the subject of gifts is dealt with in *Nawawi's* Mohammedan Law at page 234 :—

"It is an essential condition for the validity of a gift properly so-called that offer and acceptance be made in explicit terms; but in the case of a present neither offer nor acceptance are strictly necessary; it is enough if the object is brought by the donor and taken possession of by the donee. By saying to some one 'I want you to live in this house of mine and it shall pass to your heirs after your death', one makes a gift, as also by merely saying 'I want you to inhabit it', at least according to the doctrine adopted by Shafii in his second period, or by saying, 'After your death it will return to me'. Shafii in his first period expressed an opinion different from that adopted in his second as to the validity of a gift made in the following terms, 'I grant you a life interest in this house, or 'I make you a gift of it for life'; that is, if you pre-decease me it will return to me, but otherwise it will be yours irrevocably. Nowadays, however, in our school, both of the Imam's opinions have equal currency."

In my view, the formal presentation in the presence of witnesses was a complete gift, particularly when it is borne in mind that the grand-father, on the evidence of Haji Awang bin Musa, disposed of all his property to his grand-children during his life. It is also significant that the appellant abandoned at the trial her defence that the gift was void under Mohammedan Law, and relied solely on her contention that the house had been built by her husband, a defence which was manifestly untrue. In any event there was, in my view, a constructive delivery of possession at the formal presentation, and I think it would be unreal to construe the grand-father's expression of intention to remain in the house for the rest of his life as a condition

attached to the gift. The gift was completed at the formal presentation, and the arrangement for the grand-father to continue living there was made subsequently.

The learned trial judge found as a fact that the gift was complete, and I can see no reason for differing from this finding. I would accordingly dismiss this appeal with costs, the deposit in Court to be paid to the respondent towards her costs.

Sir Charles Murray-Aynsley, C.J. (S.) : — These proceedings arose out of the alleged gift of a wooden house. In this Court there were two matters for consideration. First, whether the house was a fixture which formed part of the realty, second, whether there was a perfect gift.

On the first point, I consider that there is a settled custom in this country that houses of this type are regarded as personalty in which ownership may be separate from ownership of the soil. I do not know of any judicial authority on the matter, but, in the course of the fifteen years that I have been in the country I have always found that this custom was accepted. I think that effect should be given to this custom to the exclusion of the English law of fixtures.

On the second point I think that the matter should be approached from the standpoint of English law. I believe that Moslem law on the subject is the same as English law. The facts show that the donor made a verbal gift of the house to the respondent some twenty years ago. The respondent would have then been about fifteen years of age. The donor continued to live in the house until his death about a year ago. At first the respondent lived there with the donor. On her marriage she left the house. The respondent and three other persons gave evidence about the alleged gift. It appears from the evidence of two out of the three that the gift was to take effect on the death of the donor. Even if the evidence of the respondent is accepted entirely (and it is difficult that a grand-father would divest himself of his home in favour of a young girl and depend for the rest of his life on her good nature to have a roof over his head), I consider that without any transmutation of possession there is not a complete gift under English law. If this is the case the only question is whether it is advisable to introduce this part of English law into Kedah. The question may appear very technical, but is is very easy to produce evidence of a gift of this kind and usually impossible to produce evidence to the contrary. I think, therefore, that the rule would be of utility.

I would allow the appeal.

Spenser Wilkinson, J. : — I have had the opportunity of reading the judgment of the learned President and I agree with his conclusions.

In my view the evidence indicates that the whole object of what was described by the witnesses as a "pronouncement" was a formal ceremony of gift intended to constitute constructive delivery of possession. It is not easy to see what form an actual delivery of possession from one inhabitant of a house to another could take, especially of a house which probably has no key, and it seems to me what that the parties in this case adopted the device of a formal pronouncement.

The additional evidence that the deceased said he would live in the house until his death and that his grand-daughter could then remove the house is to my mind consistent with the deceased having, after the gift, disclosed in general conversation that these were his private arrangement with his grand-daughter regarding what was now her house. The statement in the evidence made by the plaintiff that she took possession then and there is entirely uncontradicted, and I see no reason why the learned Judge should not have accepted it, as in fact he did.

I agree, therefore, that the gift was complete and that the appeal should be dismissed with costs.

Appeal dismissed.

The Firm of C. K. JOSHI v. The INDIAN OVERSEAS BANK LTD.

[O.C.J. (Spenser-Wilkinson, J.) March 20, 1953]

[Penang — Civil Suit No. 116 of 1952]

Procedure — Application to stay proceedings which are vexatious or oppressive or an abuse of the powers of the Court — Burden of proof.

In this case the defendants applied for further proceedings in the action to be stayed on the ground that the bringing of the action in Penang was vexatious and oppressive.

Held: it was for the defendants to show that it would be unjust for the questions raised in the suit to be determined in Penang and as they had failed to do so, the application must be refused.

CIVIL SUIT.

Ong Huck Lim (*Sonni Pillai* with him) for the plaintiffs.

E. A. de Buriatte for the defendants.

The facts appear sufficiently from the interlocutory judgment below.

Spenser Wilkinson, J. : — This was a Summons-in-Chambers, taken out by the defendants, applying